of equity in the political field. Although it must be recognized to be an innovation, it would be a narrow mind which would, for that reason alone, condemn an apparently beneficial exercise of power.[1]

The real difficulty of the case, however, is in regard to the third contention of the defendant, which Mr. Hersey is rather inclined to make light of. The question here is, should the court of equity have kept its hands off because the act enjoined was also a crime? Though, as we have seen, criminal proceedings would at best have afforded the people of Colorado but an inadequate redress, it by no means follows that equity will therefore interfere. Equity's inclination is, to be sure, to right every wrong unprovided for elsewhere. But whereas under our second head no good reason could be adduced why equity should not interfere, here such a reason does exist, — namely, the law's hostility to equity's enjoining any act which is a crime, owing, perhaps, to the historical reverence for the right to trial by jury. It is true that in certain limited fields, such as nuisances, which involve property rights and which equity was enjoining before the passage of our Constitution, the law tolerates equity's concurrent jurisdiction. Indeed, if a new form of nuisance arose, equity might be expected to act. But as interference with the right to vote is so far removed from the type of crime which equity has dealt with, and as it involves no property right whatsoever, the impropriety of equity's taking control seems clear. On this one point, then, the case cannot be supported.

But Mr. Hersey argues further in support of the case: "The state may, when suing in its sovereign capacity, pursue any remedy it chooses, though a private suitor might be held bound to some one remedy."[2] This statement, however, seems incorrect. It is an enunciation of the English doctrine of prerogative, which, so far as transplanted to this country at all, has been vested in the people speaking through the legislature and not through the courts. The very case on which Mr. Hersey principally relies[3] shows that the doctrine is there confined to the proposition that when the people through their legislature pass a statute, for example the Statute of Limitations, they are not thereby to be presumed to legislate the state out of its former powers unless express words are used. But, as the United States Supreme Court has pointed out, general rules of procedure — and under this head the present case seems to fail — apply equally to citizen and state.[4] Mr. Hersey's doctrine would seem to go to the length of saying that the state could prosecute for murder in equity. It proves too much. There is, then, nothing in the prerogative idea to upset the conclusion previously reached that, though Mr. Hersey is correct in his contention that equity may interfere by injunction where only a political right is involved, yet he is wrong in considering immaterial the added fact that the act enjoined would be a crime.[5]

UNAUTHORIZED AGENTS' LIABILITY ON NEGOTIABLE INSTRUMENTS. — Two elementary problems in statutory interpretation, matters of logic rather than of

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[1] For cases the language of which would support the position here taken, see State *ex rel.* Cook *v.* Houser, 122 Wis. 534, and cases cited; Boren *v.* Smith, 47 Ill. 482. For language leading to the opposite result, see Fletcher *v.* Tuttle, 151 Ill. 41; Shoemaker *v.* City of Des Moines, 105 N. W. Rep. 520 (Ia.).

[2] P. 7.

[3] Dollar Savings Bank *v.* United States, 19 Wall. (U. S.) 227. *Cf.* People *v.* Herkimer, 4 Cow. (N. Y.) 345; and an excellent note to the case in 15 Am. Dec. 380.

[4] Green *v.* United States, 9 Wall. (U. S.) 655. See also State *v.* Kroner, 2 Tex. 492.

[5] A later decision of the Colorado Supreme Court not yet reported (People *ex rel.* Graves *v.* Johnson, July 2, 1906) holds, by an apparently forced construction of the state constitution, that no inferior court, but only the Supreme Court, may take jurisdiction in a case of this kind. This decision may be indicative of a desire to get away from the disastrous effects which it was generally felt would follow the earlier case.

law, may be put thus. Let us suppose, first, that the common law imposes liability for a certain act. A statute is passed changing this liability if the actor comply with a specified condition. It follows that the old common law liability persists if he do not so comply. We will suppose, again, that the common law negatives liability for a certain act under all circumstances. A statute is passed declaring this non-liability only in case the actor comply with a certain condition. By necessary inference he would seem to incur that liability if he failed so to comply. A recent writer has applied the first of these problems in interpreting a troublesome section of the Negotiable Instruments Law. *Liability of an Agent under the Negotiable Instruments Law*, by L. P. M., 10 Law Notes (Northport) 104 (Sept., 1906). In brief the argument is this. To be negotiable commercial paper must show on its face who is bound, principal or agent. Where this did not clearly appear, judges construed very harshly against the agent until "to escape liability the agent must exclude it." [1] At common law, then, authorized or unauthorized, the agent was bound unless the instrument revealed to the point of self-exclusion that he signed for another. The Negotiable Instruments Law [2] imposes a different test, that of fair interpretation, but on one condition only. If the agent be duly authorized, the instrument need now only fairly show the representative capacity; but if unauthorized, the writer argues, it must still conform to the canon of the common law which permits escape from liability on the part of the agent if he practically excludes himself.

If the writer's statement of the common law be accepted as accurate, his conclusion cannot be disputed. With his premise, however, issue can be taken. Lord Ellenborough's remark, one not to be taken too seriously, has seemingly blinded him to the current of American decisions.[3] True, never did mere *descriptio personae* excuse an agent; but the Negotiable Instruments Law as distinctly enacts the same, — "the mere adoption of words describing him as an agent . . . without disclosing his principal, does not exempt him from personal liability." Our courts have consistently construed these instruments as a reasonable business man would construe them in the light of mercantile usages.[4] Lord Ellenborough's rule has not found favor. So far as matter of construction well may, the American rule seems admirably codified, — "words *indicating* that he signs for or on behalf of a principal or in a representative capacity." The statute expresses, not a partial change, as the writer insists, but a partial declaration of the common law. Our first formula has no application to the facts; it is the second that applies. Thus, authorized or unauthorized, the agent was not bound on the instrument at common law if it fairly showed that he signed for his disclosed principal. By the statute he is still not bound if duly authorized. If unauthorized, is he not by necessary implication bound on the instrument, even though he express enough to exclude him at common law? It would so seem, and this view, the writer admits, has been unanimously taken by the draftsman of the act, its critics, its defenders and expositors. Ballou *v.* Talbot [5] is *pro tanto* no longer law.

Against this "negative intendment" the writer also invokes the dogma that all statutes in derogation of the common law are to be strictly construed. His dogma is happily obsolescent.[6] In view of a century's statutory efforts to subvert it, the common law is no longer the something sacred that Coke pronounced it.[7] "Parrot-like repetition of a false and outworn maxim only hampers benign legislation." The merits of the doctrine under discussion are quite apart from its existence; those who acknowledge it may most regret it. A new remedy

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[1] Lord Ellenborough in Leadbitter *v.* Farrow, 5 M. & S. 345.

[2] § 20.

[3] See cases cited in 7 Cent. Dig. § 261.

[4] Carpenter *v.* Farnsworth, 106 Mass. 561.

[5] 16 Mass. 460.

[6] See The Warkworth, L. R. 9 P. D. 21; Chamberlain *v.* Western Transportation Co., 44 N. Y. 305; Sedgwick, Stat. and Const. Law, 267 n., and cases cited.

[7] See INST. 282 b, l. 3, § 485.

can hardly be said to be necessary in view of the unauthorized agent's liability for deceit and implied warranty.[1] Nor does parol evidence of authority as a prerequisite to deciding whether any one is bound on the instrument seem in aid of negotiability.[2]

ACT OF CONGRESS KNOWN AS THE EMPLOYERS' LIABILITY ACT AFFECTING COMMON CARRIERS IS UNCONSTITUTIONAL AND VOID, THE. *Garrard B. Winston* and *Blackburn Esterline.* 63 Cent. L. J. 278.

CAN THE ACCUMULATION OF GREAT WEALTH BE REGULATED BY TAXATION? Affirmative: *Aaron A. Ferris.* Negative: *Alexander Hadden.* 4 Oh. L. Rep. 260.

CODE OF LEGAL ETHICS, A. Adopted by the Colorado Bar Association for the guidance of its members. Giving rules for the conduct of attorneys in their relations with the bench, jury, clients and witnesses, both in and out of court, and suggestions as to the proper conduct of cases and amount of fees. 6 Brief 212.

CONSEQUENCES OF A TRUSTEE'S FAILURE TO CONVERT AS BETWEEN TENANT FOR LIFE AND REMAINDERMAN, THE. *Walter G. Hart.* Laying down four rules as governing the distribution of property in English courts in this case. 22 L. Quar. Rev. 285.

COPYRIGHT BILL, THE. *Charles Porterfield.* Arguing against the bill in its present form. 10 L. N. (Northport) 85, 107.

EFFECT OF REMARRIAGE IN VIOLATION OF THE ACT OF 1905, THE. *Anon.* A concise but full discussion of the effect of the Illinois Statute prohibiting remarriage of divorced parties within one year of the decree upon remarriage in another state. 33 Nat. Corp. Rep. 37.

EFFECT OF CORPORATE GREED UPON THE TREND OF RECENT DECISIONS INVOLVING SO-CALLED "VESTED" RIGHTS OF CORPORATIONS, THE. *Anon.* Stating that the trend of such decisions has been inimical to "vested rights," especially in federal courts and as to public service corporations. 33 Nat. Corp. Rep. 5.

FEDERAL JURISPRUDENCE IN RELATION TO IRREGULAR MUNICIPAL BONDS, THE. *Anon.* Calling attention to the greater tendency of federal over state courts to hold municipalities to their irregular bond issues, when some legislative authority is recited. 31 Nat. Corp. Rep. 97.

FUTURE INTERESTS IN LAND. I. *Albert Martin Kales.* Applying a classification of future interests as limited by way of succession and by way of interruption. 22 L. Quar. Rev. 250.

GOVERNMENT OF LAW AS DISTINGUISHED FROM A GOVERNMENT OF FUNCTIONARIES, A. *Hannis Taylor.* 18 Green Bag 489.

INDEMNITY BONDS UPON PAYMENT OF LOST INSTRUMENTS. *Anon.* Legislation advocated in place of the discretion of the court. 23 Banking L. J. 525.

INDEPENDENCE OF THE FEDERAL JUDICIARY. *Hannis Taylor.* 40 Am. L. Rev. 481.

INDEPENDENCE OF THE JUDICIARY. *Judson Harmon.* A brief survey of the struggle by which the judges of England (Coke the first) won independence of the king, how the judiciary was made separate in the United States, and the need of keeping it free from political influence. 14 Am. Lawyer 391.

IS OUR JURISPRUDENCE GROWING BETTER OR WORSE? *I. W. Foltz.* Commenting upon the inexactitude and instability of the common law and arguing in favor of a system of jurisprudence founded on definite maxims. 23 Chi. L. J. 185.

LANDLORD'S RIGHT TO RECOVER FOR INJURY TO USE AND OCCUPATION BY TEMPORARY NUISANCE. *Anon.* Criticising the doctrine that after a tenant has recovered for damage to his use and occupation caused by a temporary nuisance the landlord cannot recover for damage to rental values. 13 Case & Comment 34.

LANGDELL, CHRISTOPHER C. *Samuel F. Batchelder.* A sketch of the life of Professor Langdell and the early history of the case system. 18 Green Bag 437.

LANGDELL, CHRISTOPHER COLUMBUS. *Ralph Wardlaw Gloag.* A brief review of Professor Langdell's life, and a criticism of the case system for the study of law. 68 Alb. L. J. 231.

LATEST CHAPTER OF THE AMERICAN LAW OF PRIZE AND CAPTURE, THE. *Charles Chauncey Binney.* 54 Am. L. Rev. 537.

LEGAL COMPLICATIONS ARISING FROM GRAND JURY PROCEEDINGS. *F. Beecher.* Discussing how far witnesses are immune from prosecution for slanderous statements made before the grand jury. 63 Cent. L. J. 67.

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[1] See Polhill *v.* Walter, 3 B. & Ad. 114; Collen *v.* Wright, 8 E. & B. 647.

[2] See 14 HARV. L. REV. 247.

LEGITIMATE FUNCTIONS OF JUDGE-MADE LAW, THE. *Hannis Taylor.* Suggesting that the elasticity necessary to meet advancing conditions has been, and must be, supplied by the judges. 14 Am. Lawyer 400.

LIABILITY OF AN AGENT UNDER THE NEGOTIABLE INSTRUMENTS LAW. L. P. M. 10 L. N. (Northport) 104. See *supra.*

LIMITATION OF ACTIONS BROUGHT BY CREDITORS AGAINST CORPORATION STOCKHOLDERS. *George P. Costigan, Jr.* 18 Green Bag 550.

LORD MANSFIELD AND HIS RELATION TO OUR LAWS. *William L. Royall.* Dealing with Lord Mansfield's relation to his time and his relation to English jurisprudence. 14 Am. Lawyer 297, 355.

MONSTROUS REGIMENT OF THE RULE AGAINST PERPETUITIES, THE. *Charles Sweet.* Maintaining, in a review of Gray's Rule against Perpetuities, that the rule does not apply to common-law future interests. 18 Jurid. Rev. 132.

MUNICIPAL CODES IN THE MIDDLE WEST. *J. A. Fairlie.* A criticism of municipal government as organized under the codes in Illinois, Ohio, and Indiana. 21 Pol. Sci. Q. 434.

NECESSITY FOR NATIONAL LEGISLATION ON BILLS OF LADING, THE. *Thomas B. Paton.* Discussing the desirability, from a banker's point of view, of such legislation. 23 Banking L. J. 571.

NEEDED IMPROVEMENTS IN THE LAWS AFFECTING THE BANKING BUSINESS. *Thomas B. Paton.* An address before the American Bankers' Association, 1906. 23 Banking L. J. 529.

NEGOTIABLE VOUCHER CHECKS. *George C. Sinclair.* Setting forth the advantages and legal status of voucher checks containing an itemized account stated on the reverse side. 23 Banking L. J. 609.

NON-DISCLOSURE, UPON THE SALE OF LAND, OF A LATENT DEFECT KNOWN TO THE VENDOR. *T. C. Williams.* Discussing Carlisle *v.* Salt, 1906, 1 Ch. 335; admitting that a contract for land may be set aside when the defect affects title, but not when it affects quality or quantity. 50 Sol. J. 611.

PAYMENT BY A BANKER OF FRAUDULENTLY ALTERED CHEQUES. *Anon.* Maintaining that, without negligence on the part of the drawer, the banker and not the drawer is liable for payment of an altered cheque. 50 Sol. J. 713.

QUALITY OF JURORS, THE. *Jackson Guy.* Protesting against the increasing statutory exemptions from jury service of the most intelligent classes of citizens. 12 Va. L. Reg. 430.

QUEST FOR ERROR AND THE DOING OF JUSTICE, THE. *Charles F. Amidon.* Advocating the adoption of the English practice in appellate courts to reverse only for errors which go to the substance of the case. 5 Can. L. Rev. 364.

QUESTIONS OF INTERNATIONAL LAW IN THE DEPORTATION OF ALIENS. *Charles Noble Gregory.* 18 Jurid. Rev. 121.

REBIRTH OF THE CORPORATION, THE. *Peter S. Grosscup.* Deploring the ownership of corporations by the few, and suggesting a remedy. 31 Nat. Corp. Rep. 104, 127.

SHOULD THE GRAND JURY SYSTEM BE ABOLISHED? *George Lawyer.* Contending that it should be abolished. 23 Chi. L. J. 195.

STATE VERSUS CORPORATION. *C. T. Carr.* Popular review of the trust situation, with special reference to America. 18 Jurid. Rev. 159.

USE OF MEDICAL BOOKS IN THE EXAMINATION OF EXPERTS, THE. *Joseph H. Taulane.* Containing arguments favoring the admission of views expressed in standard medical works, and a review of the rules adopted in different jurisdictions. 4 Crim. L. J. of India 33.

VALIDITY AND EFFECT OF CONDITIONS ATTACHED TO LEGACIES AND DEVISES AGAINST CONTESTING WILL. *B. B. C.* Collating the law of the various jurisdictions. 10 L. N. (Northport) 128.

VENDOR'S RIGHT OF RESCISSION, A. *Anon.* An interesting summary of the cases holding that upon the condition of sale enabling the vendor to rescind upon an ejection or requisition being made which he is "unable or unwilling to comply with" should be placed the restriction that the unwillingness shall not be capricious or arbitrary. 50 Sol. J. 493.

WHEN LAND IS SOLD FOR DELINQUENT TAXES, AND PURCHASER FAILS TO HAVE DEED EXECUTED WITHIN THE STATUTORY PERIOD, WHAT IS THE CONDITION OF THE TITLE? *J. F. Bouchelle.* A discussion of the question as it arises under statute, concluding that the original owner retains title and the purchaser holds only a lien for the amount of taxes. 12 Va. L. Reg. 279.

YEAR BOOKS, THE. I. *W. S. Holdsworth.* Their history and human side. 22 L. Quar. Rev. 266.